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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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CINCINNATI DISTRIBUTING COMPANY, a  
Corporation,

Plaintiff in Error,

VS.

SHERWOOD & SHERWOOD COMMERCIAL  
COMPANY, a Corporation,  
Defendant in Error.

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**Transcript of Record.**

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Upon Writ of Error to the Southern Division of the  
United States District Court of the  
Northern District of California,  
Second Division.

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**FILED**  
SEP 10 1920  
**F. D. MONCKTON,**  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, in and for the  
Northern District of California, Second Division.

No. 16,152.

THE CINCINNATI DISTRIBUTING CO., a  
Corporation,

Plaintiff,

vs.

SHERWOOD & SHERWOOD COMMERCIAL  
COMPANY, a Corporation,

Defendant.

**Complaint for Damages.**

**I.**

That plaintiff is now and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Ohio, and having its office and principal place of business in the city of Cincinnati, in said state, and said plaintiff is a resident of the State of Ohio.

**II.**

That defendant is now and was at all the times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the city of San Francisco in said state and said defendant is a resident of the State of California.

**III.**

That on or about the 14th day of March, 1918, at the city of Los Angeles, State of California, plain-

tiff purchased from defendant, and defendant sold to plaintiff one hundred and ninety-eight barrels of whiskey for which plaintiff promised and agreed to pay on delivery the sum of \$13,042.25 and defendant promised and agreed to deliver said whiskey to plaintiff immediately on demand therefor.

## IV.

That though demand has been made for the delivery of [1\*] said merchandise, defendant has failed, refused and neglected and still fails, refuses and neglects to deliver the same or any part thereof, and said merchandise and the whole thereof is now in the possession of the above named defendant.

## V.

That if the defendant had delivered the said whiskey to plaintiff at the time and in the manner agreed upon there would have been due to said defendant the sum of \$13,042.25; that said whiskey if the same had been delivered to the plaintiff at the time and in the manner agreed upon it would have had a value to plaintiff of \$18,315 which said sum was the market value of said whiskey in the city of Los Angeles, State of California, being the place at which delivery thereof was to have been made.

That by reason of the failure of the defendant to deliver said merchandise to plaintiff, plaintiff has been damaged in the sum of \$5,272.75. no part of which has been paid.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of \$5,272.75 together with

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\*Page-number appearing at foot of page of original certified Transcript of Record.



interest and its costs of suit in this behalf incurred.

WISE & O'CONNOR,  
Attorneys for Plaintiff.

State of California,  
City and County of San Francisco,—ss.

Otto Irving Wise, being first duly sworn, deposes and says:

That he is one of the attorneys for plaintiff in the above-entitled action; that he has read the above and foregoing complaint and knows the contents thereof, that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

That he makes this affidavit for and on behalf of plaintiff for the reason that plaintiff is absent from the City and [2] County of San Francisco, State of California, wherein affiant has his offices.

OTTO IRVING WISE.

Subscribed and sworn to before me this 10th day of April, 1918.

[Seal] JULIUS CALMANN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Apr. 10, 1918. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

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(Title of Court and Cause.)

**Answer.**

Comes now the defendant and answering the complaint of plaintiff on file herein—

## I.

Alleges that it has not sufficient knowledge or information upon which to answer the allegation of Paragraph One of said complaint to the effect that plaintiff is or ever was a corporation; and for that reason denies the same.

## II.

Denies that defendant has its office and principal place of business or its office or principal place of business in the city of San Francisco in said State; but, on the contrary avers that its office and principal place of business is in the City of Los Angeles.

## III.

Denies that on or about the 14th day of March, 1918, at the city of Los Angeles or at any other time or place or at all, plaintiff purchased from defendant or defendant sold to plaintiff one hundred and ninety-eight or any other number of barrels of whiskey or any whiskey; and denies that plaintiff promised and agreed or promised or agreed to pay on delivery \$13,042.25 or any other sum or at all; and denies that plaintiff promised and agreed or promised or agreed to deliver said or any whiskey to plaintiff immediately on demand thereof or at any other time or in any other manner or at all.

## IV.

Denies that any demand has ever been made for delivery of said or any merchandise; and denies that defendant has failed, refused or neglected to deliver the same or any merchandise to plaintiff; but admits that defendant has not delivered the merchandise

described in said complaint or any similar [4] merchandise to plaintiff no contract or agreement having ever been made between the parties to this action in relation to the same.

V.

Denies that if defendant had delivered the said whiskey to plaintiff there would have been due to the defendant the sum of \$13,042.25; but, on the contrary, avers that if any contract had been made for the sale of said whiskey by defendant to plaintiff there would be a sum far in excess of said amount due as the purchase price thereof; but in that behalf defendant denies that there ever was any agreement for the delivery of said whiskey to plaintiff at any price whatsoever. Denies that the said whiskey would have had or did at any time have a value to plaintiff of \$18,315 or any other sum or at all.

Denies that plaintiff has been damaged in the sum of \$5,272.75 or in any sum whatsoever.

WHEREFORE, defendant prays to be hence dismissed with his costs.

LUCIUS L. SOLOMONS,  
Attorney for Defendant.

State of California,  
City and County of San Francisco,—ss.

Lucius L. Solomons, being first duly sworn, deposes and says:

That he is one of the attorneys for defendant in the above-entitled action; that he has read the above and foregoing complaint and knows the contents thereof, that the same is true of his own knowledge except as to the matters which are therein stated on his infor-

mation or belief, and that as to those matters he believes it to be true.

That he makes this affidavit for and on behalf of defendant for the reason that defendant is absent from the City and County of San Francisco, State of California, wherein affiant [5] has his offices.

LUCIUS L. SOLOMONS.

Subscribed and sworn to before me this 21st day of May, 1918.

[Seal]

W. D. BROWN,

Notary Public in and for the City and County of  
San Francisco, State of California.

Receipt of a copy of the within answer is hereby admitted this 21 day of May, 1918.

WISE & O'CONNOR,

Attorney for Plff.

[Endorsed]: Filed May 22d, 1918. Walter B. Maling, Clerk. [6]

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(Title of Court and Cause.)

**Judgment of Nonsuit.**

This cause having come on regularly for trial on the 7th day of May, 1920, being a day in the March 1920 term of said Court, before the Court and a jury of twelve men duly impaneled and sworn to try the issue joined herein; Richard S. Goldman, Esq., appearing as attorney for plaintiff and Fred C. Peterson, Esq., appearing as attorney for defendant; and the trial having been proceeded with and evidence having been introduced on behalf of plaintiff and

closed, and the attorney for the defendant having thereupon moved the Court for a judgment of nonsuit, and the Court after hearing arguments of the respective parties upon said motion and after full consideration thereof having ordered that said motion be granted and that a judgment of nonsuit be entered herein with costs to the defendant:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action; and that judgment of nonsuit be and is hereby entered against said plaintiff herein; that the defendant go hereof without day; and that said defendant do have and recover from said plaintiff its costs herein expended, taxed at \$31.00.

Judgment entered May 7, 1920.

WALTER B. MALING,  
Clerk. [7]

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In the District Court of the United States, in and for  
the Southern Division of the Northern District  
of California, Second Division.

No. 16,152.

CINCINNATI DISTRIBUTING COMPANY, a  
Corporation,

Plaintiff,

vs.

SHERWOOD & SHERWOOD COMMERCIAL  
CO., a Corporation,

Defendant.

**Bill of Exceptions.**

BE IT REMEMBERED, that the above-entitled action came on regularly for trial before the above-entitled court, sitting with a jury, on the sixth day of May, 1920; Hon. Frank H. Rudkin, United States District Judge, presiding. Messrs. Goldman & Altman appearing as attorneys for plaintiff, and Messrs. Lucius L. Solomons and Fred C. Peterson appearing as attorneys for defendants.

The jury having been duly empaneled and sworn, the following proceedings were had, and testimony in evidence introduced, objections and rulings made, and exceptions taken and allowed:

**Deposition of Samuel Davis, for Plaintiff.**

Plaintiff read in evidence the deposition of SAMUEL DAVIS, who testified as follows:

**Direct Examination.**

I was in Los Angeles on the fourteenth of March, 1918. I was in the office of Sherwood & Sherwood Commercial Company on that [8] day. While there, I heard Mr. Harry Lieb, the managing head of that company, conduct a conversation over the telephone with Sidney L. Hellman. I heard Mr. Lieb say that he would take \$1.35 per gallon for "Old Taylor." I know he was speaking with Mr. Sidney Hellman, because he stated to me right after the conclusion of the conversation that he was talking to a friend of mine, and I asked him who, and he said, "Sid Hellman." The gentleman that I have just referred to was connected with the Cincinnati



(Deposition of Samuel Davis.)

Distributing Company, of Cincinnati. Mr. Lieb stated to me after his conversation with Mr. Hellman, that if he sold at \$1.35 he would sell at a nice profit, and make about \$6,000 on the deal.

Cross-examination.

At the time of the conversation referred to I was employed by the Clysmic Spring Company. I was soliciting the business of Sherwood & Sherwood. I had known Mr. Hellman about a year before this conversation, in a business way. I do not know what Mr. Hellman said over the telephone to Mr. Lieb. I know that Mr. Lieb, during his conversation, said he would take \$1.35 for the whiskey, and I supposed that Mr. Hellman had taken him up, as he told me later in San Francisco that he had bought that whiskey. I do not know whether Mr. Hellman and Mr. Lieb ever had a meeting after this conversation, with reference to making a contract for the whiskey. I do not know the total number of gallons which were purchased or how much was to be paid.

The whiskey was located at Sherwood & Sherwood, at San Francisco. I do not know whether it was in a Government warehouse. I do not know the year that the whiskey was made, or how delivery or payment was to be made. From Mr. Lieb's conversation, I supposed that there was some quantity, owing to the fact that he had figured the amount of profit out to me. The amount was \$6,000, I remember. Mr. Lieb said that selling the whiskey at \$1.35 a gallon, he would make a profit of about \$6,000. The [9] portion of the conversation that I heard took

(Deposition of Samuel Davis.)

about five minutes. I do not know whether Mr. Hellman was in Los Angeles or San Francisco at the time. Mr. Lieb did not tell me.

Redirect Examination.

I understand now the whiskey was bought by Sherwood & Sherwood for seventy or eighty cents, and sold for \$1.35, leaving a profit of sixty or seventy cents a gallon, I do not know which. I know this from the conversation I had with Mr. Lieb when he was figuring the profit.

Recross-examination.

Mr. Lieb was boasting of the very fine profit that he would make in selling the whiskey at that price. I was familiar with the prices at which whiskey was being sold at that time, \$1.35 was the market price. As I understood the conversation, the whiskey was at the main office in San Francisco. It might have been in the warehouse. I do not know whether Mr. Hellman asked any questions as to where the whiskey was located.

I do not know anything about the serial number of the receipts, the number of gallons, or anything of that nature; that was a matter between Hellman and Lieb. I do not recall any statement that was made that would indicate when the payment for the whiskey was to be made.

Redirect Examination.

I was engaged in the whiskey business for six years. I am familiar with the customs and usages governing transactions such as took place between



(Deposition of Samuel Davis.)

Mr. Lieb and Mr. Hellman. In such matters payment is made by the buyer at the time that the warehouse receipts are received, with a draft attached thereto. I heard Mr. Lieb say to Mr. Hellman that he could consider the deal made at \$1.35, and that he was leaving the office to go downtown. [10]

Recross-examination.

(Q.) I will ask you if it is customary and usual for men purchasing whiskey in the sum of \$13,000, when the purchaser and seller are in the same city, to transact such a thing over the telephone.

(A.) At that time, as I would take the matter under consideration, the fact that the market was changing overnight, dropping and soaring high, business was done in that manner all over California—particularly at that time in California. The custom was for a man to buy and sell on a brokerage commission. He would call up the seller, and if he had anything to sell, the sale would be completed over the telephone, or on the street, without any cash paid in advance. Owing to the advancing market, it seemed to be the custom to take each other's word. To my knowledge, it was not customary or usual for people engaging in business of that magnitude to do their business in writing in the whiskey business.

**Deposition of Sidney L. Hellman, for Plaintiff.**

THEREUPON plaintiff read in evidence the deposition of SIDNEY L. HELLMAN, who testified as follows:

I reside in Louisville, Kentucky. My occupation

(Deposition of Sidney L. Hellman.)

is the whiskey commission business. I have been engaged in that business since 1887. During the month of March, 1918, I was a stockholder and officer of the Cincinnati Distributing Company, an Ohio corporation, engaged in the whiskey brokerage business. The president of this corporation was Louis L. Rosensteil. I was secretary and treasurer. In addition to my duties as an officer, I bought and sold whiskey for the company.

In March, 1918, I was either in Los Angeles or San Francisco. I went to Los Angeles about the middle of March, 1918. While there, I purchased from Messrs. Sherwood & Sherwood, 200 barrels of "Old Taylor" whiskey, on advice from the Cincinnati office. I purchased 100 barrels of the "Fall of 1913" at \$1.32½, and 100 [11] barrels of the "Spring of 1914" at \$1.35, less all charges to date, and 2% commission. I was acting for the Cincinnati Distributing Company. I mean that I purchased this whiskey at \$1.32½ and \$1.35 per proof gallon, as shown by the warehouse receipt, which always have marked thereon the number of gallons of each barrel purchased.

The whiskey was stored at the distillery warehouse, close to Frankfort, Kentucky. The 200 barrels of whiskey purchased by me would contain close to 10,000 gallons. Whiskey in a bonded warehouse runs about 48 gallons to a barrel.

I purchased this whiskey in the following manner: I spoke to Mr. Lieb, who was the manager of the Sherwood business, at Los Angeles, and he men-

(Deposition of Sidney L. Hellman.)

tioned having this "Fall of 1913" and "Spring of 1914" Old Taylor Whiskey. I told him the market for these goods at that time was about \$1.30 for the 13's, and \$1.45 for the 14's. The terms "13's" and "14's" would mean to the trade that the goods had been made in the spring or fall of the year mentioned, which is the usual way of identifying the age of whiskey. Mr. Lieb told me that he would probably take \$1.35 per proof gallon for the 200 barrels, and that he would communicate with me at 4 o'clock in the afternoon. This was either March 13th or March 14th. I called Mr. Lieb up over the telephone at 4 o'clock. He told me he had concluded to let me have the goods at \$1.35 per proof gallon, less charges and commission. I then informed him that I would not purchase it at that price, because I had purchased goods of similar description, with a difference of 5¢ per gallon between the 13 and 14 ages, but that in this instance I was willing to take them at a difference of 2½¢, and offered him \$1.32½ for the "Fall of 1913," and \$1.35 for the "Spring of 1914." After a moment's hesitation, he said, "Very well, I will take it"; and I said immediately, "I wish you would wire confirmation to our Cincinnati office"; and he replied, saying, "I am ready to leave the office; there is someone [12] waiting for me, and I cannot take the time. Will you make this confirmation yourself for me?" I naturally did so. Mr. Lieb was representing the Sherwood & Sherwood Commercial Company, of Los Angeles, in this transaction. After this conversation, I immediately

(Deposition of Sidney L. Hellman.)

wired confirmation to the Cincinnati Distributing Company, of this lot of whiskey.

There was one barrel short in each of the lots, by reason of the fact that there was an excessive outage in one barrel of the 13's and one barrel of the 14's. This reduced the total amount to 198 barrels.

The following morning I had another conversation with Mr. Lieb at his office. He said that one of the young ladies in his employ was making out the invoice, and he asked me if I wanted to check them over; and I said, "No, that will be done by our office. I haven't the time, and cannot do it as well as they can." He said to me, "How do you want me to close this transaction?" I said, "This is a cash transaction. As soon as you have your invoices made out, attach the warehouse receipt and your invoice to a sight draft for the amount shown by your invoice, and put it into the bank as cash, and it will be paid on presentation at Cincinnati. If there are any errors in your figures they can be checked as they come to the Cincinnati office."

Mr. Lieb stated that this would be satisfactory. I notified the Cincinnati office of this purchase immediately after my conversation with Mr. Lieb, at 4 o'clock, on the 14th of March, 1918. The document which is now shown me is a copy of a telegram which was sent by me to the Cincinnati Distributing Company, and bears date March 13, 1918.

THEREUPON plaintiff offered in evidence, the document referred to by the witness, which said

document was admitted in evidence, and marked "Plaintiff's Exhibit 1." [13]

To the introduction of said exhibit, as well as Plaintiff's Exhibits 2, 3 and 4 hereinafter set forth, defendant objected on the ground that said exhibits, and each of them, were irrelevant, incompetent, immaterial, hearsay and insufficient to constitute a valid contract or memorandum thereof under the statute of fraud. Said exhibit 1 was in words and figures as follows: [14]

**Plaintiff's Exhibit No. 1.**

"The Cincinnati Distg. Co.,  
Cincinnati, O.

Sherwood will sell hundred spring fourteen hundred fall fourteen Old Taylor. If you want in addition to Melczer purchase believe one thirty five for fourteen one thirty two half for thirteen less commission would buy. Wire fast message either way Offer less draft through Muellenkamp or any direct buyer.

(Signed) S. L. HELLMAN."

The next day noon I received a telegram, which I herewith produce.

(Said telegram was thereupon offered and admitted in evidence, and marked "Plaintiff's Exhibit No. 2." Said telegram is in words and figures as follows:)

**Plaintiff's Exhibit No. 2.**

“Cincinnati, O., Mar. 14, 1918.

Sidney L. Hellman,  
Cr. Vannuys Hotel,  
Los Angeles, Calif.

Buy Sherwood Taylor at prices your wire or better. Fall thirteens spring fourteen. Wire quick.

(Signed) CINCINNATI DISTRIBUTING  
CO.”

On March 14, 1918, in reply to Plaintiff's Exhibit No. 2, I sent the wire, a copy of which is herewith exhibited to me.

(Thereupon, plaintiff offered said wire in evidence, and the same was admitted and marked, “Plaintiff's Exhibit No. 3.” Said wire was in words and figures as follows:)

**Plaintiff's Exhibit No. 3.**

“Los Angeles, Calif., Mar. 14, 1918.

The Cincinnati Distributing Co.,  
607 Traction Bldg.,  
Cincinnati, O.

Bought ninety nine each fall thirteen spring fourteen Taylor. One thirty two half thirty five less commission.

(Signed) S. L. HELLMAN.”

After sending the last telegram, I returned to San Francisco. [15]

On March 26, I received a telegram from the Cincinnati Distributing Company, at San Francisco, which said telegram I herewith produce.



(The telegram referred to by witness was thereupon offered in evidence, and admitted, and marked "Plaintiff's Exhibit No. 4." Said telegram was in words and figures as follows:

**Plaintiff's Exhibit No. 4.**

"Cincinnati, O., Mar. 26, 1918.

S. L. Hellman,

Care Palace Hotel,

San Francisco, Calif.

Have not received the two hundred barrels Taylor we bought from Sherwood and Sherwood. We sold these goods some time back to the Loma Grand Company Chicago. We must have delivery.

(Signed) THE CINCINNATI DISTRIBUTING  
CO."

Upon receipt of this telegram, I write Mr. Lieb immediately, and got him on the long-distance telephone. I told him that the office was anxiously awaiting delivery of the goods. The connection was very poor, but I understood him to say that we could not get delivery, and that I should write him. I thereupon sent him a wire to the effect that he would have to make delivery of these goods, or give me assurances in writing that they would deliver these goods. This telegram was eventually returned to me by mail, with a notation on it that is in his own handwriting and his signature.

(The witness thereupon produced said telegram, which was thereupon offered in evidence by plaintiff, and marked "Plaintiff's Exhibit No. 5." Said telegram and the written notation thereon is in words and figures as follows:)

**Plaintiff's Exhibit No. 5.**

“San Francisco, Cal., Mar. 30, '18.

Sherwood & Sherwood Mer. Co.

Los Angeles, Cal.

Unless you notify me or my company in writing immediately that you will deliver the one hundred ninety eight barrels of Taylor I bought from you we will buy same on the market deliver to our purchaser and bring suit against your company for any loss to us.

CINCINNATI DISTRIBUTING CO.,

S. L. HELLMAN.

(NOTATION.)

Sid: Have your head examined and go as far as you like.

(Signed) HARRY LIEB.” [16]

This pencil notation was the first positive intimation I had that Sherwood & Sherwood would not deliver the 198 barrels of Old Taylor Whiskey. Previous to sending this telegram, I had the long distance with Mr. Lieb, which I have just referred to, and I understood him to say at that time that he would not make delivery. Upon receipt of this information, I wired the office of the Cincinnati Distributing Company, in Cincinnati, advising them that Lieb refused to make delivery.

Subsequent to writing Mr. Lieb with reference to this transaction on March 28th, I received a letter from Mr. Lieb, which I herewith produce.

(Said letter was thereupon offered in evidence by plaintiff and admitted, and marked “Plaintiff's Ex-



(Deposition of Sidney L. Hellman.)

hibit No. 6.” Said letter was in words and figures as follows:)

**Plaintiff's Exhibit No. 6.**

“Los Angeles, Calif., Mch. 29, 1918.

Mr. S. L. Hellman,

c/o Palace Hotel,

San Francisco, Calif.

Dear Sid:

I have for acknowledgment your favor of March 27, which has been carefully noted. There is no question that you were willing to buy some 200 barrels of Old Taylor that we spoke of when you were here; but at the same time you must remember there was no positive decision as to our selling. And another thing, due to our long, pleasant acquaintanceship, when you advised the writer that at the price quoted you were compelled to sell at lower figures, treating you as a friend, nothing in the world would tempt me to force a loss on you. To be candid and truthful, we have sold the whiskey at a much higher price at which you offered.

The motto of this communication is: ‘Do not sell what you have not purchased, or what has not been sold to you.’

Sid, dear fellow, you were a little bit too anxious. At no time during our conversation did I positively advise that we would sell at the price you mentioned. If you will recall, the writer said he would like to get a certain figure for the whiskey, and advised that we

(Deposition of Sidney L. Hellman.)

were checking up to see if we could sell at the price quoted.

Very truly yours,

(Signed) H. M. LIEB."

This letter is in the handwriting of Mr. Lieb, manager of the Sherwood & Sherwood Commercial Company, at Los Angeles. [17]

The "Old Taylor" whiskey referred to in this transaction, is one of the best known brands of whiskey in America. The market price of this whiskey of the kind purchased by me from Sherwood & Sherwood, on the 30th day of March, 1918, or the 1st day of April, 1918, ranged from \$1.75 to over \$1.85 a gallon. The market rose steadily from September, 1917, from sixty or seventy cents per gallon, up to \$1.85 and \$2.00 by the following April.

#### Cross-examination.

I had never previously purchased whiskey from Sherwood & Sherwood. I was not familiar with their business methods. They were familiar with mine, because of purchases of this sort where they have sold other whiskies was made exactly in this way. The year preceding this transaction I had bought for the Cincinnati Distributing Company, about 7,000 barrels of whiskey. Of this, probably 2,000 barrels was purchased by telephone. Our method, and the method of all houses in the business, was to transact these matters by telephone when on the ground. I received confirmation of the purchase in this case by Mr. Lieb telling me to wire for him to confirm it. This is the only instance that I re-

(Deposition of Sidney L. Hellman.)

call, where confirmation was given in the manner that I have just described. I had previously purchased whiskey without obtaining confirmation, or without any writing. I believe that I had made such purchases during the fall of 1917. I thought I had the usual and customary confirmation in this case, when Mr. Lieb gave me permission to wire for him that he confirmed the sale. I signed my name to the wire. I did what he told me to do.

I have been acquainted with Mr. Lieb for twelve years, and I believe that he would do just what he said he would do. I did not become suspicious by reason of the failure to receive any wire or confirmation from Sherwood & Sherwood. I had taken it for granted that Mr. Lieb had fulfilled his agreement, until the [18] Cincinnati office wired me that the papers had not arrived. The first written information that I received from Sherwood & Sherwood that the goods were not being delivered, was the letter which has been introduced in evidence, and marked "Plaintiff's Exhibit No. 6." I received this before I received my telegram returned with the pencil notation. Mr. Lieb told me to confirm the sale at the time of our telephone conversation when the deal was closed, to which I have previously referred. On the following day when I called at Mr. Lieb's office, I asked him for a further confirmation in writing; I thought he was giving it to me with the draft attached to the papers. He did not give me the papers; they were to be put in the bank as cash—he was to put the draft in as cash. I did not get the

(Deposition of Sidney L. Hellman.)

draft then. He did not give me anything. I did not know that the confirmation he had given me the day before was an irregular confirmation. I did not ask him for a separate confirmation the following day.

I received a wire from the Cincinnati Distributing Company that the goods had been sold to the Loma Grand Company, of Chicago. I believe that was the day following the date that the purchase was made. I have a copy of the invoice to the Loma Grand Company. It appears from the invoice, that it was sold at \$1.40 per gallon. At this rate, the profit on the sale would have been between \$700 and \$800. On the date that the purchase was made, whiskey of that description might have been purchased in the open market in the east at the same price that I purchased it from Sherwood & Sherwood. It could not have been bought on the coast, because I had bought all that was out there that I knew of.

The day after the purchase was made, Mr. Lieb further confirmed the sale to me by telling me that he was figuring the papers; and asked what method should be taken to get his money, and I told him to put the invoice in with a draft attached as cash; and his answer was, that that was perfectly satisfactory. [19]

The Cincinnati Distributing Company delivered the 198 barrels of whiskey to the Loma Grand Company of Chicago, at \$1.40 per proof gallon, in accordance with its contract. The whiskey to fill that order

(Deposition of Sidney L. Hellman.)

was purchased in the open market at \$1.85 per proof gallon.

Redirect Examination.

(Q.) I will ask you to state whether or not the confirmation as made by Mr. Lieb in this transaction, was or not irregular.

(A.) It was regular. Had I not *through* that it was regular, I would have insisted on getting what I considered was a regular confirmation. I had known of a few thousand such confirmations as was obtained in this case, in the whiskey trade.

Where the transaction was a matter of correspondence between the parties, it would naturally be confirmed by telegram. In all of transactions where both of the contracting parties is on the ground, most of them are done over the telephone. I did not purchase the whiskey from Sherwood & Sherwood until the Cincinnati Distributing Company had authorized me to buy the same.

**Deposition of Lewis S. Rosenstein, for Plaintiff.**

THEREUPON plaintiff read in evidence, the deposition of LEWIS S. ROSENSTEIL, who testified as follows:

In March and April, 1918, I was president of the Cincinnati Distributing Company, which was engaged as brokers dealing in warehouse receipts, case goods, whiskey, brandies and gins. I had been connected with the whiskey trade since 1907. The office of the Cincinnati Distributing Company, in March and April, 1907, was No. 370 Traction Building, Cin-



(Deposition of Lewis S. Rosensteil.)

cincinnati, Ohio. I was in charge of the business of that company at that place.

The first information the company had regarding the purchase of "Old Taylor" whiskey at Los Angeles, from Sherwood & [20] Sherwood Commercial Co., was a telegram from Mr. Hellman stating that he believed he could buy 200 barrels of "Old Taylor" whiskey. This is the telegram introduced in evidence and marked "Plaintiff's Exhibit No. 1."

In reply to this telegram, plaintiff sent the telegram to Mr. Hellman, which has been introduced in evidence and marked "Plaintiff's Exhibit No. 2."

The next information that we had was the telegram from Mr. Hellman, which has been introduced in evidence, and marked "Plaintiff's Exhibit No. 3," stating that he had bought from Sherwood & Sherwood, 200 barrels of "Old Taylor" whiskey. The exact amount of the purchase was 198 barrels; one barrel being missing out of each lot. The confirmation as made by Mr. Hellman in this case, was the identical confirmation we had from Mr. Hellman and other agents of our company, with reference to other transactions. Wherever our representative has a personal interview with the seller, it is customary to have the confirmation sent through our representative, and not through the other party. This is especially true where the seller is a well-known concern. Sherwood & Sherwood were a house of long standing, and known to every dealer in the United States.

Upon receipt of the telegram from Mr. Hellman

(Deposition of Lewis S. Rosensteil.)

(Plaintiff's Exhibit No. 3), I personally sold the "Old Taylor" whiskey to the Loma Grand Company, at Chicago, at \$1.40 per proof gallon. The sale to the Loma Grand Company was made over the telephone, on March 14, 1918. Under date of March 23, 1918, the following letter was received by plaintiff from the Loma Grand Company:

**Plaintiff's Exhibit No. 7.**

"March 23, 1918.

Cincinnati Distributing Co.,

Cincinnati, O.

Gentlemen:

We are very pleased to receive your letter this morning, because we 'accused' Freedman & Richard of having sold us these goods.

In view of present market conditions we are especially grateful to get the lot. We are in no hurry for the papers—will be glad to have you send them along any time.

Very truly yours,

(Signed) THE LOMA GRAND COMPANY,

By H. H. KLEIN. [21]

(The foregoing letter was therefore offered in evidence by plaintiff, and admitted as "Plaintiff's Exhibit No. 7.")

The goods which we sold to the Loma Grand Company was the "Old Taylor" whiskey which we had bought from Sherwood & Sherwood. I had no other whiskey of this description to sell at that time.

The following letter was received by Cincinnati Distributing Co. from the Loma Grand Company:

(Deposition of Lewis S. Rosenstein.)

**Plaintiff's Exhibit No. 8.**

“March 21, 1918.

“Cincinnati Distributing Co.,  
Cincinnati, O.

Gentlemen:

We are still awaiting papers on the 200 barrels of Fall 1913 and Spring 1914 ‘Old Taylor’ purchased from you last week over the long distance telephone.

Very truly yours,

(Signed)      THE LOMA GRAND CO.,

By KLEIN.”

(This letter was thereupon offered in evidence by plaintiff, and admitted and marked “Plaintiff’s Exhibit No. 8.”)

The following day, I wrote to the Loma Grand Company that the 198 barrels of Taylor Whiskey which had been purchased by them had not yet reached us, but that as soon as they arrived we would advise them. On March 29, 1918, we received a further communication from the Loma Grand Company, inquiring when the receipts for the “Old Taylor” whiskey would arrive. On the following day, having communicated with Mr. Hellman in San Francisco, in the meanwhile, I advised the Loma Grand Company that the party from whom we had purchased the whiskey positively refused to deliver the same. Under date of April 1, we received a letter from the Loma Grand Company, stating that they must insist upon the delivery of the whiskey as ordered. We were compelled to, and did, purchase [22] sufficient whiskey to fill our contract with the



(Deposition of Lewis S. Rosenstein.)

Loma Grand Company, from the Republic Distributing Company, on April 4, 1918, at \$1.85 per proof gallon. The whiskey was actually delivered by us to the Loma Grand Company. On March 30 and April 1, 1918, the market price of "Old Taylor" whiskey of the kind which was purchased by us from Sherwood & Sherwood, was \$1.85 per proof gallon.

I think I first learned that Sherwood & Sherwood would not deliver the 198 gallons of "Old Taylor" whiskey purchased on March 14, 1918, on April 1, or possibly March 30. During March and April, of 1918, the period which generally elapsed between the date of mailing of invoices and drafts from Los Angeles to Cincinnati, was seven to ten days. A delay of even two weeks in receiving the documents in this transaction did not arouse any suspicion on my part.

#### Cross-examination.

The generally accepted custom in the whiskey trade is, in ninety per cent of cases, to confirm purchases over the telephone, without any written or further confirmation. This custom prevails in dealings among reputable brokerage houses. I think this was the first transaction that our firm ever had with Sherwood & Sherwood. We had heard of this firm from our traveling salesmen and the whiskey trade generally for some time prior to this transaction. They were known as one of the most reputable houses on the Coast. Since this transaction, I heard they are not what they are supposed to be. On investigation, I learned of parties in Louisville holding similar claims to this one of ours. We could hardly

**(Deposition of Lewis S. Rosenstein.)**

be expected to have required a form of confirmation from Sherwood & Sherwood in this transaction. The wire from Mr. Hellman stated that we could buy 200 barrels of whiskey at this price. Naturally, when we wired Mr. Hellman that we would take the whiskey at that price, we thought that the deal was completed. [23]

It would be very unusual to pay cash in a transaction of this kind. We always purchased our whiskey with the papers attached to a draft which was to be presented at the First National Bank of Cincinnati and this was generally known to the trade. This was the usual procedure in transactions of this character. The fact that no word was received from Sherwood & Sherwood for more than ten days after Mr. Hellman had wired that the whiskey was purchased, gave me no concern. I would have waited for two weeks longer before making any inquiry, had I not met Mr. C. B. Baker, a whiskey broker, who informed me that he had purchased this same whiskey from Sherwood & Sherwood around the 16th or 17th of the month at a slight advance in price. As soon as he told me this, I wired Mr. Hellman to get the whiskey. When I sold the Loma Grande Company the 200 barrels of whiskey, I thought that I was selling them the whiskey I purchased from Sherwood & Sherwood. In the original telegram from Mr. Hellman, it referred to 200 barrels. It was not until his second telegram that I learned that

it was 198 barrels, and I immediately corrected my offer to the Loma Grande people.

Plaintiff thereupon rested.

Defendant thereupon moved for a nonsuit upon the ground that under the statute of frauds of the State of California, an agreement for the sale of goods in excess of the value of \$200, must be in writing, unless the buyer accepts or receives a part of the goods or pays at the time of the agreement some part of the purchase price; that in the present case, it appears that the merchandise sold was in excess of the value of \$200 and that no portion of the same was delivered, nor was any portion of the purchase price paid; that the agreement which plaintiff attempted to prove in this action rested in parol and that no memorandum sufficient to take the same out of the operation of the statute of frauds was introduced in evidence.

The Court thereupon granted said motion for nonsuit. [24]

To this ruling, plaintiff then and there excepted, and now designates said exception as

#### PLAINTIFF'S EXCEPTION No. 1.

Thereupon and pursuant to said order granting said motion for nonsuit, judgment was entered in favor of defendant and against plaintiff for defendant's costs of suit.

And to the judgment heretofore rendered as aforesaid, plaintiff then and there excepted and now designates said exception as

#### PLAINTIFF'S EXCEPTION No. 2.

Now, within the time allowed by law and stipulation of counsel, plaintiff presents the foregoing as its proposed bill of exceptions in the above-entitled action and prays that the same may be settled and allowed.

Dated: July 15th, 1920.

GOLDMAN & ALTMAN,  
Attorneys for Plaintiff. [25]

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In the District Court of the United States, in and  
for the Southern Division of the Northern Dis-  
trict of California, Second Division.

No. 16,152.

CINCINNATI DISTRIBUTING COMPANY, a  
Corporation,

Plaintiff,

vs.

SHERWOOD & SHERWOOD COMMERCIAL  
CO., a Corporation,

Defendant.

**Stipulation for Allowance of Bill of Exceptions.**

It is hereby stipulated and agreed that the foregoing bill of exceptions was presented by plaintiff within the time allowed by law therefor and that the same is a true and correct copy of the proceedings had at the trial of the above-entitled action and that the same may be certified, allowed and settled as provided by law and the practice of this court.

Dated: August 4th, 1920.

LUCIUS L. SOLOMONS,

FRED C. PETERSON,

Attorneys for Defendants.

GOLDMAN & ALTMAN,

Attorneys for Plaintiff.

**Order Settling and Allowing Bill of Exceptions.**

I, the undersigned, judge of the District Court of the United States, who presided at the trial of the above-entitled [26] action, do hereby certify that the foregoing bill of exceptions having been presented by plaintiff within the time allowed by law therefor, is a true and correct copy of the proceedings had at the trial of said action and do hereby settle and allow the same and order that said bill of exceptions be filed with the clerk of said court.

Dated: August 10th, 1920.

FRANK H. RUDKIN,

District Judge.

Receipt of a copy of the within proposed bill of exceptions admitted this 15th day of July, 1920.

LUCIUS L. SOLOMONS and

F. C. PETERSON,

Attorneys for Defendant.

[Endorsed]: Filed Aug. 10, 1920. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [27]

In the District Court of the United States, in and  
for the Southern Division of the Northern Dis-  
trict of California, Second Division.

No. 16,152.

CINCINNATI DISTRIBUTING COMPANY, a  
Corporation,

Plaintiff,

vs.

SHERWOOD & SHERWOOD COMMERCIAL  
CO., a Corporation,

Defendant.

**Petition for Writ of Error.**

Cincinnati Distributing Company, a corporation, plaintiff in the above-entitled action, feeling itself aggrieved by the judgment entered herein on the 7th day of May, 1920, comes now by Messrs. Goldman & Altman, its attorneys, and petitions said Court for an order allowing said plaintiff to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals, for the 9th Circuit, under and in accordance with the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the said plaintiff shall give and furnish upon such writ of error and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the 9th Circuit.

And your petitioner will ever pray.



Dated: August 10th, 1920.

GOLDMAN & ALTMAN,  
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 10, 1920. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [28]

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(Title of Court and Cause.)

**Assignments of Error.**

Now comes the plaintiff above named and files the following assignments of error upon which it will rely upon its prosecutions of the writ of error in the above-entitled action:

(1) That the above-named District Court erred in granting defendant's motion for nonsuit, which ruling is designated in the bill of exceptions herein as Plaintiff's Exception No. 1.

(2) That the said District Court erred in rendering its decision in favor of defendant and against plaintiff, for the reason that said decision is against law.

(3) That said District Court erred in rendering judgment in favor of defendant and against plaintiff, for the reason that said judgment is contrary to the evidence and the law applicable thereto.

WHEREFORE, plaintiff prays that the judgment of the District Court of the United States in and for the Southern Division of the Northern District of the State of California, Second Division, be reversed, and that said cause may be remanded to said United States District Court for a new trial.

Dated: August 10th, 1920.

GOLDMAN & ALTMAN,  
Attorneys for Plaintiff.

Receipt of a copy of the within assignments of error admitted this 10th day of August, 1920.

LUCIUS L. SOLOMONS,  
FRED C. PETERSON,  
Attorneys for Defendant.

[Endorsed]: Filed Aug. 10, 1920. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [29]

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In the District Court of the United States, in and  
for the Southern Division of the Northern Dis-  
trict of California, Second Division.

No. 16,152.

CINCINNATI DISTRIBUTING COMPANY, a  
Corporation,

Plaintiff,

vs.

SHERWOOD & SHERWOOD COMMERCIAL  
CO., a Corporation,

Defendant.

**Order Allowing Writ of Error and Fixing Amount  
of Bond.**

Upon motion of Richard S. Goldman, Esq., one  
of the attorneys for plaintiff in the above-entitled  
action, and upon filing a petition for writ of error  
and an assignment of errors,—

IT IS HEREBY ORDERED that a writ of error  
be and it is hereby allowed to have reviewed in the



United States Circuit Court of Appeals for the 9th Circuit the judgment heretofore entered herein on the 7th day of May, 1920, and that the amount of the bond on said writ of error be and the same is hereby fixed at the sum of \$300.00, said bond to be served as a cost bond and a supersedeas bond on said writ of error.

Dated: August 10th, 1920.

FRANK H. RUDKIN,  
United States District Judge.

[Endorsed]: Filed Aug. 10, 1920. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

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### **Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS,  
That we, Cincinnati Distributing Co., a corporation,  
as principal, and National Surety Company, a corporation, as surety are held and firmly bound unto Sherwood & Sherwood Commercial Co., a corporation in the full and just sum of three hundred (\$300.00) dollars, to be paid to the said Sherwood & Sherwood Commercial Company, a corporation, or its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors or assigns jointly and severally, by these presents.

Scaled with our seals and dated this 10th day of August in the year of our Lord one thousand nine hundred and twenty.

WHEREAS, lately at a District Court of the United States for the Northern District of Cali-

fornia in a suit depending in said court, between Cincinnati Distributing Co., a corporation, plaintiff, and Sherwood & Sherwood Commercial Company, a corporation, defendant a judgment was rendered against the said plaintiff and the said plaintiff having obtained from said court a writ of error to reverse the said judgment in the aforesaid suit, and a citation directed to the said defendant citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said plaintiff shall prosecute such writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

CINCINNATI DISTRIBUTING CO. [Seal]

By RICHARD S. GOLDMAN,

Its Attorney.

NATIONAL SURETY COMPANY,

By E. S. HELLER,

Resident Vice-President. [Seal]

Attest: F. J. CRISP, [Seal]

Resident Asst. Secty.

[Seal National Surety Co.] [31]

State of California,

City and County of San Francisco,—ss.

On this tenth day of August, in the year one thousand nine hundred and twenty, before me, Julius

Calmann, a notary public in and for the said City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared E. S. Heller and F. J. Crisp known to me to be the resident vice-president and resident assistant secretary, respectively, of the National Surety Company, the corporation described in, and that executed the within instrument, and also known to me to be the persons who executed it on behalf of the corporation therein named, and they acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Seal] JULIUS CALMANN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Form of bond and sufficiency of sureties approved.

FRANK H. RUDKIN,  
Judge.

[Endorsed]: Filed Aug. 10, 1920. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

(Title of Court and Cause.)

### Praeceptum for Record on Writ of Error.

To the Clerk of Said Court:

Sir: Please prepare record on writ of error to include the following papers:

Complaint.

Answer.

Judgment.

Bill of exceptions.

Assignments of error.

Petition for writ of error.

Order allowing writ of error and fixing bond.

Writ of error.

Citation on writ of error.

Bond on writ of error.

GOLDMAN & ALTMAN,  
Attorneys for Plaintiffs in Error.

[Endorsed]: Filed Aug. 11, 1920. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [33]

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In the Southern Division of the United States Dis-  
trict Court, in and for the Northern District of  
California, Second Division.

No. 16,152.

CINCINNATI DISTRIBUTING COMPANY, a  
Corporation,

Plaintiff,

vs.

SHERWOOD & SHERWOOD COMMERCIAL  
COMPANY, a Corporation,

Defendant.

**Clerk's Certificate to Record on Writ of Error.**

I, Walter B. Maling, clerk of the District Court  
of the United States, for the Northern District of

California, do hereby certify the foregoing thirty-three (33) pages, numbered from 1 to 33, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$14.00; that said amount was paid by the attorneys for the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 26th day of August, A. D. 1920.

[Seal] WALTER B. MALING,  
Clerk United States District Court for the Northern  
District of California. [34]

### Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to  
the Honorable, the Judges of the District Court  
of the United States for the Northern District  
of California, Second Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Cincinnati Distributing Co., a corporation,

plaintiff in error, and Sherwood & Sherwood Commercial Company, a corporation, defendant in error, a manifest error hath happened, to the great damage of the said Cincinnati Distributing Company, a corporation, plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 10th day of August, in the year of our Lord one thousand nine hundred and twenty.

[Seal]

WALTER B. MALING,  
Clerk of the United States District Court, Northern  
District of California.

By J. A. Schaertzer,  
Deputy Clerk.



Allowed by

FRANK H. RUDKIN,

United States District Judge.

Receipt of a copy of the within writ of error admitted this 10th day of August, 1920.

LUCIUS L. SOLOMONS,

FRED C. PETERSON,

Attorneys for Defendant.

**Return to Writ of Error.**

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

[Seal]

WALTER B. MALING,

Clerk United States District Court, Northern District of California.

[Endorsed]: No. 16,152. United States District Court for the Southern Division, Northern District of California, Second Division. Cincinnati Distributing Co., Plaintiff in Error, vs. Sherwood & Sherwood Commercial Co., Defendant in Error. Writ of Error. Filed Aug. 11, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [35]

**Citation on Writ of Error.**

UNITED STATES OF AMERICA—ss.

The President of the United States, to Sherwood & Sherwood Commercial Co., a Corporation,  
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Southern Division of the Northern District of California, Second Division, wherein Cincinnati Distributing Co., a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. RUDKIN, United States District Judge for the Eastern District of Washington, assigned to hold and holding United States District Court, Northern District of California, this 10th day of August, A. D. 1920.

FRANK H. RUDKIN,  
United States District Judge.

Receipt of a copy of the within citation on writ of error admitted this 10th day of August, 1920.

LUCIUS L. SOLOMONS,  
FRED C. PETERSON,  
Attorneys for Defendant.

[Endorsed]: No. 16,152. United States District Court for the Southern Division, Northern District of California, Second Division. Cincinnati Distributing Co., Plaintiff in Error, vs. Sherwood & Sherwood Commercial Co., Defendant in Error. Citation on Writ of Error. Filed Aug. 11, 1920. W. B. Mal-  
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[36]

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[Endorsed]: No. 3545. United States Circuit Court of Appeals for the Ninth Circuit. Cincinnati Distributing Company, a Corporation, Plaintiff in Error, vs. Sherwood & Sherwood Commercial Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division. Filed August 27, 1920.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

